

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Vuze, Inc.	)	
	)	
Petition To Establish Rules	)	
Governing Network Management	)	
Practices By Broadband Network Operators	)	
	)	
Broadband Industry Practices	)	WC Docket No. 07-52

**REPLY COMMENTS OF HANDS OFF THE INTERNET**

Hands Off The Internet is a nationwide coalition supporting growth of the Internet for the benefit of consumers.<sup>1</sup> As explained in our previous Comments,<sup>2</sup> and as reflected in the Comments of others,<sup>3</sup> the Federal Communications Commission ("FCC" or the "Commission") should refrain from commencing a rulemaking to define "reasonable network management" as it is nothing more than a transparent attempt to seek net neutrality regulations "through the back door." As even proponents of net neutrality concede, the current regulatory regime is more than

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<sup>1</sup> Hands Off The Internet is a nationwide coalition of Internet users, manufacturers and network operators united in the belief that the Internet's phenomenal growth over the past decade will continue if government does not attempt an unwise effort to regulate a market that is otherwise working to give consumers the choices, freedom, prices and diverse experiences they desire in the new age of the Internet. Members of Hands Off The Internet include 3M, Acriontec, ADC Telecommunications, Alcatel-Lucent, The America Channel, America Conservative Union, AT&T, BTech Inc., Communications Technology Solutions, Center for Individual Freedom, Cinergy Communications, Citizens Against Government Waste, Communications Systems, Inc., Condux International, Inc., DiamondWare, DSM Desotech, Electrodata, Inc., Enhanced Telecommunications, Inc., FiberControl, Frontiers of Freedom, Hitachi Telecom (USA), Inc., Independent Technologies, Inc., JDS Uniphase Corp., Katolight Corporation, Latinos in Information Sciences and Technology Association, MRV Communications, Inc., MyWireless.org, National Association of Manufacturers, National Black Chamber of Commerce, National Coalition on Black Civic Participation, NetCompetition.org, NorthStar Communications Group, Inc., NSG America, Inc., OFS Optics, OnTrac Incorporated, Optical Zonu, Inc., Peco II, Inc., Prysmian Communications, Sumitomo Electric, Sunrise Telecom, Inc., Telesync, Inc., Valere Power, Inc., and Vermeer Manufacturing, Inc.

<sup>2</sup> Comments of Hands Off The Internet, WC Docket No. 07-52 (June 15, 2007); Reply Comments of Hands Off the Internet, WC Docket No. 07-52 (July 16, 2007); Comments of Hands Off The Internet, WC Docket No. 07-52 (Feb. 13, 2008).

<sup>3</sup> E.g., Comments of the Telecommunications Industry Association, WC Docket No. 07-52 at 15-21 (Feb. 13, 2008).

capable of ensuring that network broadband operators act consistently with the Commission's four principles on net neutrality set forth in its 2005 Policy Statement.<sup>4</sup> Moreover, severe and unintended consequences may result from enacting bright-line rules based on the vague and overbroad definitions of "reasonable network management" proposed by the majority of net neutrality proponents. Consumers stand to suffer should that occur.

**I. Net Neutrality Proponents Agree that the Isolated and Unproven Allegations of Incidents Are Merely Unproven Claims Capable of Resolution Within the Present Regulatory Environment and a Rulemaking Is Unnecessary**

It is beyond dispute that through the enforcement of existing federal laws and legal doctrines, the FCC has the authority to ensure that network broadband operators act consistently with the Commission's four principles on net neutrality.<sup>5</sup> The FTC potentially also has a role to play. In the submissions filed by the net neutrality proponents, their silence speaks volumes on why this existing authority is fully sufficient to deal with the isolated incidents and unproven allegations. They cannot dispute that the law already provides an adequate remedy.

As discussed in our Comments at length, the record proves that new regulations are unnecessary. The jurisdiction of the FCC was invoked by complaints about Comcast's alleged attempts to degrade and/or block content; the FCC already has begun an investigation into these allegations under its existing authority; and the Commission can, if necessary, remedy these issues under the existing regulatory structure.<sup>6</sup> Furthermore, in the sole instance of a provider's intentional blocking or degradation in the United States, the Madison River case, the FCC

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<sup>4</sup> Comments of Free Press, *et al.*, WC Docket No. 07-52 at 15-34 (Feb. 13, 2008) (setting forth four bases under which the FCC may ensure compliance with the four principles on net neutrality under its existing regulatory authority).

<sup>5</sup> Comments of Hands Off the Internet, EC Docket No. 07-52 at 3-6 (Feb. 13, 2008) (detailing the various bases of authority for the FCC, FTC and state action against network broadband operators who act inconsistently with the four principles on net neutrality).

<sup>6</sup> Cheryl Bolen, *FCC Opens Inquiries Into Concerns About Network Management Policies*, Electronic Commerce & Law (BNA) Vol. 13, No. 4, at 108 (Jan. 23, 2008).

demonstrated that it will swiftly and effectively enforce the four principles on net neutrality without any additional regulations.<sup>7</sup>

The Comments submitted by Free Press, *et al.*, the same group seeking a declaratory ruling based on unconfirmed allegations that Comcast has violated these principles, agree that the FCC's existing authority is sufficient to deal with alleged violations of the four principles.<sup>8</sup> Free Press' Comments themselves state that the "FCC needs only to issue a narrow declaration" if Comcast is, in fact, found to have violated these principles.<sup>9</sup> Without evidence of any widespread actual harm to consumers, the FCC's approach to dealing with the occasional allegations in an enforcement context is the most efficient and effective means of protecting consumers' rights under the four principles of net neutrality. More importantly, such an approach avoids potentially overly broad or burdensome legislation.<sup>10</sup>

## **II. The Vague and Overbroad Definitions of "Reasonable Network Management" Are Unworkable and Internally Inconsistent and May Cause Severe Unintended Consequences**

Undue regulation at a time when great network management flexibility is needed will result in harm to consumers. The increasing data processing demands on today's networks are overwhelming. Massive increases in video downloading and other new technological advances mean that broadband traffic has doubled on some networks in the last two years alone.<sup>11</sup> For example, just 75 one-hour conference calls on Cisco's newest video-conferencing system would

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<sup>7</sup> See *In the Matter of Madison River Commc'ns*, Order, File No. EB-05-IH-0110, Acct. No. 200532080126, FRN: 0004334082 (rel. Mar. 3, 2005), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-05-543A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-543A1.pdf).

<sup>8</sup> Comments of Free Press, *et al.*, WC Docket No. 07-52 at 16 (Feb. 13, 2008).

<sup>9</sup> *Id.* at 15.

<sup>10</sup> Comments by the National Association of Realtors, WC Docket No. 07-52 (Feb. 13, 2008) ("Moreover, unless the FCC exercises proper regulatory authority on a case-by-case basis, additional overly broad or burdensome legislation may result.")

<sup>11</sup> Amy Schatz, Dionne Searcey and Visheh Kumar, *Officials Step Up Net-Neutrality Efforts*, Wall St. J., Feb. 13, 2008, at A4 (stating that traffic on AT&T's broadband network has doubled in the last two years alone and broadband customers are using 40% more bandwidth each year).

equal the entire internet traffic of the year 1990 and one 3D multiplayer game (such as World of Warcraft) with one million users could generate more than an Exabyte per year of network traffic, or almost a tenth of last year's U.S. Internet volume.<sup>12</sup> As described in our previous Comments, and the Comments of others, there is a clear need to manage the networks that carry this volume of data traffic in order to maintain the requisite levels of customer service.<sup>13</sup> The risks of regulations which restrict network providers' ability to manage their own networks may lead to the undesirable result of whole communities (including underserved and minority communities) with degraded broadband connections, or being left entirely without broadband access.<sup>14</sup>

However, the proponents of net neutrality have proposed the very type of overly broad and unworkable definition of "reasonable network management" that could lead to such results by indicating that it merely be "nondiscriminatory."<sup>15</sup> As discussed in our previous comments, this type of "definition" would likely have the effect of preventing broadband network operators from entering into new business arrangements, thereby forcing the costs of increasing capacity directly onto consumers and impeding the growth of the Internet.<sup>16</sup>

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<sup>12</sup> Bret Swanson and George Gilder, *Unleashing the 'Exaflood'*, Opinion, Wall St. J., Feb. 22, 2008, at A15.

<sup>13</sup> See, e.g., Comments of Hands Off The Internet, WC Docket No. 07-52, at 9-14 (Feb. 13, 2008); Comments of the Telecommunications Industry Association, WC Docket No. 07-52 at 10-15 (Feb. 13, 2008).

<sup>14</sup> See, e.g., Comments of The Labor Council for Latin American Advancement, WC Docket No. 05-72 (Feb. 11, 2008); Harry C. Alford, *Net Neutrality Is Seen As A Benefit for Minorities*, Opinion, Wall St. J., Feb. 20, 2008, at A13; Telecom Policy Report, *Research Cites Net Neutrality's "Unintended Consequences"*, July 24, 2006, available at [http://findarticles.com/p/articles/mi\\_m0PJR/is\\_29\\_4/ai\\_n16548324](http://findarticles.com/p/articles/mi_m0PJR/is_29_4/ai_n16548324).

<sup>15</sup> Comments of Free Press, *et al.*, WC Docket No. 07-52 at 14 (Feb. 13, 2008) ("The FCC need not necessarily define what a reasonable network practice would be, other than that it must [be] nondiscriminatory."); Comments of Joseph Tucek, WC Docket No. 07-52 at 2 (Feb. 13, 2008) (recommending that "[t]he FCC should prohibit any network management practice that considers the content of network traffic" including legality); *In re Vuze, Inc. Petition To Establish Rules Governing Network Management Practices by Broadband Network Operators*, WC Docket No. 07-52 at 13 (Nov. 14, 2007) ("The rules should ensure that network operators do not block, degrade, or unreasonably discriminate against lawful Internet applications, content or technologies.").

<sup>16</sup> Comments of Hands Off The Internet, WC Docket No. 07-52 at 13-14 (Feb. 13, 2008).

Moreover, Free Press, *et al.*'s, argument is internally inconsistent with respect to its requirement that "reasonable network management" be defined as nondiscriminatory. After proposing that "reasonable network management" be defined as nondiscriminatory, it then goes on to discuss how a broadband network operator's discrimination against viruses, malware or spyware is "generally acceptable."<sup>17</sup> *Free Press is in favor of some discrimination, which in its judgment protects the network. But just as an operator must remain free to manage its network to keep it free of harmful content, it also must be free to manage traffic and engage in business arrangements to ensure reliable and low-cost delivery to consumers. There is no policy difference between the two methods of management, as consumer benefit is the goal of both.*

Not only does Free Press contradict itself in making this argument, it proposes a vague and unworkable definition of "reasonable network management." If the definition provides an exception for certain types of discrimination, how will it be defined? For example, if discrimination against spyware, malware and viruses is acceptable, how will those terms be defined and what happens when technological work-arounds are developed to evade these definitions? Will the FCC then be required to update or change the categories of data that can be discriminated against under this definition as newer technologies are developed which do not provide value to consumers and potentially damage networks? Given their obvious incentive to strike the appropriate balance to maintain the requisite level of quality of service for their customers, allowing network broadband providers the ability to create a market-based solution to network management would be far more efficient than engaging in a rulemaking that has the potential to create severe and unintended consequences.

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<sup>17</sup> Comments of Free Press, *et al.*, WC Docket No. 07-52 at 38 n.145 (Feb. 13, 2008)

### III. CONCLUSION

Proponents of net neutrality regulation have not only failed to demonstrate that any evidence exists as to why the current regulatory formula is insufficient to protect consumers under the Commission's four principles on net neutrality, they have actually demonstrated why the present regulatory structure effectively protects consumers in its present form. Moreover, any regulation defining "reasonable network practices" will invariably result in an overly broad and unworkable definition that will result in severe and unintended consequences. As stated in our previously filed Comments, these include increased costs to consumers, clear disincentives to network expansion by broadband network operators and a regressive effect that would impact minority and underserved communities who are in need of the greatest level of protection. For these reasons, we respectfully request that the Commission refuse to promulgate a rulemaking that would define "reasonable network management."

Respectfully submitted,

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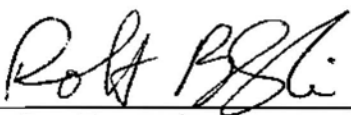
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Counsel for Hands Off The Internet

February 28, 2008

**Certificate of Service**

Pursuant to Section 1.47 of the Commission's rules, I, Robert Bernstein, hereby certify that I have delivered a copy of these Reply Comments of Hands Off The Internet to Counsel for Free Press, *et al.*, by first class mail today, February 28, 2008.

  
Robert Bernstein